

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (BOSTON)

ST. JUDE MEDICAL, S.C., INC., a Minnesota
corporation,

Plaintiff,

vs.

BIOTRONIK, INC., an Oregon corporation;

Defendants.

Case No.: 1:14-CV-91022

**DECLARATION OF SEAN DONAUHUE
IN OPPOSITION TO ST. JUDE MEDICAL,
S.C., INC.'S MOTION TO COMPEL**

I, Sean Donahue, being over the age of 21 years, and having personal knowledge of the following facts, declare as follows:

1. I represent Biotronik, Inc., an Oregon corporation ("Biotronik"), in an action captioned *JMA, Inc., et al. v. Biotronik, Inc.*, Case No 12-cv-23466, currently pending in the United States District Court for the Southern District of Florida (the "Action").

2. The Action arises from the alleged breach of sales representative agreements (the "Representative Agreements") in which Biotronik granted certain Plaintiffs in the Action (the "Plaintiff Representatives") exclusive rights to sell certain medical devices (the "Devices") in defined areas of South Florida. Plaintiffs in the Action allege that Biotronik breached the Representative Agreements by allowing others to sell the Devices within the Plaintiff Representatives' territories and by terminating these contracts.

3. Plaintiffs' claims in the Action were originally asserted against Biotronik and against Biotronik, SE & Co., KG, a German company ("Biotronik SE"), which Plaintiffs incorrectly

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alleged was Biotronik's parent. *See April 4, 2013 Order Granting Motion to Dismiss for Lack of Personal Jurisdiction ("Order"), at 10.* In the Order, the district court dismissed Plaintiffs' claims against Biotronik SE for lack of personal jurisdiction. *Id., at 11.* A copy of the Order is attached hereto as Exhibit "1".

4. As the Order makes clear, the "Representative Agreements [at issue in this case] define the term 'Biotronik' as Biotronik, Inc. There is no reference to Biotronik SE [or to any other German company] in the Representative Agreements." *Id., at 3.* Moreover, the Order rejected Plaintiff St. Jude Medical S.C., Inc.'s ("SJM") efforts to conduct jurisdictional discovery relating to Biotronik SE because "Plaintiffs appear to be searching for potential additional causes of action" and this "discovery would be, by definition, a 'fishing expedition.'" *Id., at 10-11.*

5. In describing SJM's straightforward breach of contract of claims in the Order, the district court paraphrased paragraphs 35 and 54 of Plaintiffs' First Amended Complaint. A copy of the First Amended Complaint is attached to the Declaration of Christopher Demetriades, filed in this case, as Exhibit "A". Specifically with regard to SJM's OEM allegations, the Order provides that "(s)ometimes after the 2009 Representative Agreement was signed, plaintiffs learned that Biotronik was selling components of its devices to other device companies who sold their products with the Biotronik components within the areas assigned to plaintiffs, thus infringing on the exclusivity granted in the Representative Agreements." *Order, at 4.*

6. The Representative Agreements are filed under seal in the Action. However, paragraph 15a of each of the Representative Agreements granted the Plaintiff Representatives the exclusive right to "solicit orders *only* for the purchase of those Products which are authorized by Biotronik in writing from time-to-time to be sold." (Emphasis added.)

7. There is no writing by Biotronik that authorizes any of the Plaintiff Representatives to sell any Boston Scientific or Sorin (or any other company's) OEM device.

8. SJM's efforts to obtain discovery in this Court of matters relating to Biotronik SE's OEM devices is a "fishing expedition" in which Plaintiffs are once again "searching for

potential additional causes of action.” *Order at 10-11*. This discovery is improper.

I HEREBY DECLARE UNDER PENALTIES OF PERJURY UNDER THE
LAWS OF THE STATE OF OREGON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 23 day of January, 2014.

DONAHUE & ASSOCIATES

By



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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicted as non registered participants on February 5, 2014.

/s/ Timothy D. Johnston

Timothy D. Johnston